

## 13 Am. Jur. 2d Carriers § 35

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### Carriers

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### Part One. In General

### III. Regulation and Control of Carrier's Operations

### B. State Regulation

## § 35. Sovereign power and restriction by Commerce Clause

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### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  1, 2

Under the dual system of federal and state governments, the inherent sovereign power to regulate intrastate transportation by common carriers is reserved to the states.<sup>1</sup> Within the limits of a state constitution, the legislature's authority is supreme with regard to the regulation of intrastate transportation by common carriers unless the regulation in effect deprives a person or corporation of property without due process of law, denies equal protection, directly and materially burdens interstate commerce in violation of the Constitution of the United States, or violates some other provision of federal law.<sup>2</sup>

A state statute that requires that all motor carrier vehicles whether or not registered in the state must be periodically inspected, either under the law of the state or some other state, does not impose an unconstitutional burden on interstate commerce, since the state legislature has a reasonable basis to believe that the inspection of motor carrier vehicles is likely to discover some defective vehicles and that some vehicle defects contribute to accidents.<sup>3</sup> Similarly, a state may impose a gross weight regulatory fee on common and contract carriers without violating the Commerce Clause when the fee is imposed on interstate and intrastate carriers alike and does not force interstate carriers to bear a higher cost per mile than intrastate carriers, where the fee serves the legitimate state interest of funding safety and inspection programs for trucks using state highways, and the fee does not place an excessive burden on interstate commerce.<sup>4</sup> However, a county granting an exclusive franchise to a passenger carrier service for the ground transportation of passengers from an airport to the county in derogation of a preexisting carrier's operations constitutes an unreasonable burden on interstate commerce, since the preexisting carrier's operations are within the stream of interstate commerce, even though they take place wholly within a single state.<sup>5</sup>

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Footnotes

- 1                   Southern Pac. Co. v. State of Ariz., 249 U.S. 472, 39 S. Ct. 313, 63 L. Ed. 713 (1919); Chicago & N. W. Ry. Co. v. Ochs, 249 U.S. 416, 39 S. Ct. 343, 63 L. Ed. 679 (1919); Gulf, C. & S. F. Ry. Co. v. State of Texas, 246 U.S. 58, 38 S. Ct. 236, 62 L. Ed. 574 (1918).  
In determining whether a carrier's operation in hauling goods between points in one state through another state is a subterfuge to evade intrastate regulation, the courts should look to the reasonableness of the carrier's modus operandi, as evidenced by the degree of circuitry involved in the route when compared with the "local" route normally employed by intrastate carriers, the presence or absence of economic or operational justification for such a routing apart from the carrier's lack of intrastate authority and the incidental or dominant character of intrastate traffic as a portion of the carrier's overall operation; no single factor is controlling. *Application of Silvey Refrigerated Carriers, Inc.*, 226 Neb. 668, 414 N.W.2d 248 (1987).
- 2                   *State v. Jacksonville Terminal Co.*, 96 Fla. 295, 117 So. 869, 59 A.L.R. 324 (1928); *Railroad Commission of Georgia v. Louisville & N. R. Co.*, 140 Ga. 817, 80 S.E. 327 (1913); *Michigan Cent. R. Co. v. Michigan Railroad Commission*, 183 Mich. 6, 148 N.W. 800 (1914); *Range Sand Line Brick Co. v. Great Northern Ry. Co.*, 137 Minn. 314, 163 N.W. 656 (1917); *Davison v. Chicago & N.W. Ry. Co.*, 100 Neb. 462, 160 N.W. 877 (1916); *Chicago, R.I. & P. Ry. Co. v. State*, 1917 OK 471, 67 Okla. 10, 168 P. 239 (1917).  
Because a common carrier performs a public transportation service, the legislature can grant it the sovereign power to take private property for a public use, and the state can control its operations, to the extent that such regulation is not precluded by federal law. *Thompson v. Heineman*, 289 Neb. 798, 857 N.W.2d 731 (2015).  
As to preemption of state regulation of rail carriers, see § 46, and of motor carriers and freight forwarders, see § 88.  
As to the validity of state regulations that directly, indirectly, or incidentally burden commerce, see *Am. Jur. 2d, Commerce* §§ 35 to 41.
- 3                   *American Trucking Associations, Inc. v. Larson*, 683 F.2d 787 (3d Cir. 1982).
- 4                   *Franks & Son, Inc. v. State*, 136 Wash. 2d 737, 966 P.2d 1232 (1998).
- 5                   *Charter Limousine, Inc. v. Dade County Bd. of County Com'rs*, 678 F.2d 586 (5th Cir. 1982).

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